

September 9, 2002

Honorable Michael K. Powell  
Chairman  
Federal Communications Commission  
445 12th Street, S.W.  
Washington, DC 20554

Dear Chairman Powell:

On August 8, 2002, the Commission adopted a Notice of Proposed Rulemaking on digital broadcast copy protection that may involve the Federal Communication Commission in making determinations with implications for the scope of rights and protections granted by the Copyright Act. We appreciate the hard work of the FCC in taking steps to ensure that the transition of broadcast television service from analog to digital technology moves forward smoothly and in a timely fashion to meet the target completion date set out by the Congress in the Communications Act. We also appreciate the importance of and strongly support finding solutions to protect free over-the-air digital broadcasts from illegal retransmission.

As the leaders of the Congressional Committees with jurisdiction over copyright and other intellectual property rights matters, we have a substantial interest in any action the Commission would contemplate that could affect the exclusive rights, and limitations thereon, granted under our copyright law and, in particular, digital broadcast copy protection. We request that the Commission, as it proceeds, consult with our Committees on a regular basis, providing timely reports and briefings to our Committees on its work, and seeking our input and advice before it makes any determinations.

Paragraph 10 of the Notice seeks guidance on "...the jurisdictional basis for Commission rules dealing with digital broadcast television copy protection." While Title 47 grants authorities to the FCC in respect of broadcasting, no express authority is provided to address the complex issues of intellectual property matters in general or digital broadcast copy protection in particular. *See, e.g.*, 47 U.S.C. § 336(b)(4) (authorizing the FCC to "adopt such technical and other requirements as may be necessary or appropriate to assure the quality of the signal used to provide advanced television services"), 47 U.S.C. § 336(b)(5) (authority to prescribe regulations relating to advanced television services "as may be necessary for the protection of the public interest, convenience, and necessity"), and 47 U.S.C. § 154(i) (jurisdiction that is "reasonably ancillary" to its specific grants of authority over telecommunications issues).

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We note approvingly that you and your colleagues on the Commission have not yet made any determination regarding the scope of your own jurisdiction in this matter. As part of this examination, please consider whether clearer guidance or an express authorization from the Congress is warranted before engaging in a rule making with respect to issues having a direct impact on the scope and interpretation of the Copyright Act.

We expect that you will inform us promptly of any information you receive or develop on the subject of jurisdiction over copyright issues. The continued vitality of intellectual property protection in the digital age and the balancing of rightholder and consumer interests are issues of utmost and continued importance to our Committees. We acknowledge the importance of and support pushing ahead with the digital transition and ensuring that digital broadcast viewers have access to high-quality content. At the same time, we hope the FCC action will further the industry-led consensus on an effective and efficient copy protection scheme.

Please include this letter as part of the proceedings.

Sincerely yours,

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Representative F. James Sensenbrenner, Jr.  
Chairman

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Senator Patrick J. Leahy  
Chairman

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Representative John Conyers  
Ranking Member

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Representative Howard Coble  
Chairman

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Representative Howard Berman  
Ranking Member